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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE BARRY TED MOSKOWITZ)

UNITED STATES OF AMERICA,) Case No. 08CR0297-BTM
v.)
Plaintiff,)
AURELIANO ZAPATA-LOPEZ,) DATE: JUNE 6, 2008
Defendant.) TIME: 1:30 p.m.
)
) NOTICE OF MOTIONS AND MOTIONS TO:
)
) 1) DISMISS THE INDICTMENT BECAUSE IT
) DOES NOT ALLEGES INSPECTION AND
) ADMISSION BY AN IMMIGRATION OFFICER
) OR ACTUAL AND INTENTIONAL EVASION OF
) INSPECTION AT THE NEAREST INSPECTION
) POINT;
) 2) DISMISS THE INDICTMENT BECAUSE IT
) FAILS TO ALLEGES THE MENS REA ELEMENT
) OF THE OFFENSE;
) 3) DISMISS THE INDICTMENT DUE TO
) MISINSTRUCTION OF THE GRAND JURY;
) AND
) 4) PRODUCE TRANSCRIPT OF GRAND JURY
) PRESENTMENT OF INSTRUCTIONS
) CONCERNING THE ELEMENTS OF THE
) OFFENSE.
) 5) GRANT LEAVE TO FILE FURTHER
) MOTIONS.

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
WILLIAM HALL, ASSISTANT UNITED STATES ATTORNEY:

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1 PLEASE TAKE NOTICE that on June 6, 2008, at 1:30 p.m., or as soon thereafter as counsel may
2 be heard, defendant, Aureliano Zapata-Lopez, by and through his attorneys, Kris J. Kraus, and Federal
3 Defenders of San Diego, Inc., will ask this Court to enter an order granting the following motions.

4

5 **MOTIONS**

6 Defendant, Aureliano Zapata-Lopez, by and through his attorneys, Kris J. Kraus, and Federal
7 Defenders of San Diego, Inc., asks this Court pursuant to the United States Constitution, the Federal Rules
8 of Criminal Procedure, and all other applicable statutes, case law, and local rules for an order to:

- 9 (1) Dismiss the Indictment Because it Does Not Allege Inspection and Admission by an
10 Immigration Officer or Actual and Intentional Evasion of Inspection at the Nearest Inspection
Point;
- 11 (2) Dismiss the Indictment Because it Fails to Allege the Mens Rea Element of the Offense;
- 12 (3) Dismiss the Indictment Due to Misinstruction of the Grand Jury; and
- 13 (4) Produce Transcript of Grand Jury Presentment Instructions Concerning the Elements of the
Offense.
- 14 (5) Grant Leave to File Further Motions.

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16 These motions are based upon the instant motions and notice of motions, the attached statement of
17 facts and memorandum of points and authorities, the files and records in the above-captioned matter, and
18 any and all other materials that may come to this Court's attention prior to or during the hearing of these
19 motions.

20 Respectfully submitted,

21

22 Dated: May 23, 2008

/s/ Kris J. Kraus

KRIS J. KRAUS

Federal Defenders of San Diego, Inc.
Attorneys for Mr. Aureliano Zapata-Lopez
Kris_Kraus@fd.org

1 CERTIFICATE OF SERVICE

2 Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of her
3 information and belief, and that a copy of the foregoing document has been served this day upon:

4 William Hall
5 U S Attorneys Office Southern District of California
6 880 Front Street
7 Room 6293
8 San Diego, CA 92101
9 (619)557-5610
10 Fax: (619)557-5917
11 Email:william.hall@usdoj.gov

12 Dated: May 23, 2008

13 _____
14 /s/ Kris J. Kraus

15 KRIS J. KRAUS
16 Federal Defenders
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